

**IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA**

DAVID BRIAN MORGAN,)	
)	
Petitioner,)	
)	
v.)	CIV-14-337-R
)	
MIKE ADDISON, Warden,)	
)	
Respondent.)	

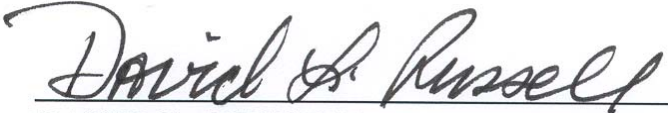
ORDER

Petitioner filed this action pursuant to 28 U.S.C. § 2254, challenging his state convictions and sentences. Pursuant to 28 U.S.C. 636(b)(1)(B), the matter was referred to United States Magistrate Judge Suzanne Mitchell for preliminary review. On May 2, 2014, Judge Mitchell issued a Report and Recommendation wherein she recommended that the petition be dismissed as untimely. The matter is currently before the Court on Petitioner's timely objection to the Report and Recommendation.

There is no dispute that the March 27, 2014 petition filed herein was untimely, Petitioner's conviction having become final on April 9, 2011. *See* 28 U.S.C. § 2244(d)(1)(A)-(D). Petitioner sought no state post-conviction relief, and thus is not entitled to statutory tolling. Accordingly, the only issue is whether Petitioner is entitled to equitable tolling. In the petition Mr. Morgan conceded that his petition was untimely, and requested that the Court be lenient in light of his ignorance and his reliance on alleged misrepresentations of counsel. In response to the Report and Recommendation Petitioner contends that once he transferred to the state prison system that he spent eight months at the

Lexington Area Reception Center on 24 hour lockdown. He asserts that thereafter he was transferred to Joseph Harp and that his job assignment required him to work from 8:00-4:30, the same hours the law library is open. The Court finds that despite Petitioner's contentions, he is not entitled to equitable tolling, and that even if the Court tolled the statute of limitations for the time he spent at Lexington, he is still nearly three years out of time, which is far too long to toll the statute of limitations, as he has failed to in any manner indicate that he has been pursuing his rights diligently. Accordingly, the Report and Recommendation is hereby ADOPTED in its ENTIRETY and the petition is DISMISSED AS UNTIMELY.

IT IS SO ORDERED this 27th day of May, 2014.



DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE